Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
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Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	
	)	
Request for Review of a Decision of the Universal Service Administrator by	)	
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	)	
Hemet Unified School District, Hemet, California	)	
	)	

Request for Review

Vincent Christakos
Assistant Superintendent
Business Services
Hemet Unified School District
1791 W. Acacia Avenue
Hemet, California 92545

July 25, 2011

Summary

On May 26, 2011, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company denied the appeal of Hemet Unified School District ("Hemet") seeking reversal of SLD's Commitment Adjustment ("COMAD") rescinding funding for two of Hemet's funding request for Funding Year 2006. SLD found that Hemet had violated California state procurement laws, specifically Sections 20111 and 20112 of the California Public Contract Code.

The SLD Decision should be reversed. First, the Decision does not state any violation of the Commission's rules governing the schools and libraries universal service support mechanism ("E-Rate"), and is at odds with decades of Commission precedent deferring to state and local authorities to resolve matters within their jurisdictions. Second, the audit finding on which the COMAD is based goes beyond the permitted scope of the audit engagement, does not constitute a legal determination of noncompliance, and therefore does not provide a clear and sufficient basis for the SLD's COMAD. Third, even if the Commission were to consider the substance of Hemet's procurement activities, these activities comply with applicable Commission and California requirements.

Finally, if the Commission nevertheless finds that Hemet somehow violated the Part 54 E-Rate rules, Hemet requests a waiver to the extent of such violation. Hemet faces severe budgetary constraints as a result of the fiscal crisis gripping states and municipalities across the nation today. An order to repay nearly $500,000 in support for services used in Funding Year 2006 would cause grave injury to the educational opportunities of Hemet students today, a result clearly contrary to the purposes of the E-Rate program.

Table of Contents

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Request for Review of Hemet Unified School District

Hemet Unified School District ("Hemet") hereby requests that the Commission review and reverse a Decision of the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") dated May 26, 2011 (the "Decision") (attached hereto as **Attachment A**).

The SLD Decision improperly denied Hemet's appeal (attached hereto as **Attachment B**) of a Funding Year 2006 Commitment Adjustment ("COMAD," attached hereto as **Attachment C**). The COMAD improperly rescinded $537,704.82 in support originally provided under two Funding Request Numbers (1409240 and 1409327), based on the SLD's finding that Hemet had not complied with the bid publication requirements of the California Public Contract Code ("CPCC"), as those requirements were understood by USAC and its auditors, KPMG. In addition, SLD concluded that Hemet's certification in its Funding Year 2002 FCC Form 470 that it had complied with state and local procurement requirements was somehow erroneous, despite the fact that this certification was made many years before the purported violation took place and does not appear to bear any relevance to the appeal at issue for FY2006.

The SLD Decision suffers from a number of legal infirmities, each of which requires Commission reversal. First, the Decision does not state any violation of the Commission's E-Rate rules, and is at odds with decades of Commission precedent deferring to state and local authorities to resolve matters within their jurisdictions. Second, the audit finding on which the COMAD is based goes beyond the permitted scope of the audit engagement, does not constitute a legal determination of noncompliance, and, therefore, does not provide a clear and sufficient basis for the SLD's COMAD. Third, even if the Commission were to consider the substance of Hemet's procurement activities, these activities comply with applicable Commission and California requirements.

Background

Sections 20111 and 20112 of the CPCC require school districts to follow a formal contract letting process, including notice publication requirements, in awarding specific types of contracts. The Section 20111 process applies to contracts over specific dollar thresholds, with certain exceptions, for (1) the purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district; (2) services, except construction services; and (3) certain types of repairs.[1] Section 20111 has numerous exceptions, however, including "professional services or advice, insurance services, or any other purchase or service otherwise exempt from this section."[2]

When Section 20111 applies, Section 20112 states, in relevant part:

1 Cal. Pub. Cont. Code § 20111(a).

2 *Id.* at § 20111(c).

> For the purpose of securing bids the governing board of a school district shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no such paper, then in some newspaper of general circulation, circulated in the county, and may post on the district's Web site or through an electronic portal, a notice calling for bids, stating the work to be done or materials or supplies to be furnished and the time when and the place and the Web site where bids will be opened.[3]

On November 12, 2004, Hemet posted a Form 470 (No. 657340000509508) (the "2005 Form 470") seeking telecommunications services, Internet access, and internal connections for Funding Year 2005. The 2005 Form 470 specified the telecommunications services that Hemet required, namely local telephone service, long distance service, cell phone service, high speed lines, and voicemail, each at 26 sites. Pursuant to CPCC Section 20111, which creates an exemption from the formal contract letting process for "professional services or advice, insurance services, or any other purchase or service otherwise exempt from this section," Hemet stated in the 2005 Form 470 that it did not intend to release an RFP for telecommunications services separate from the Form 470.

Because Hemet had determined that its purchase of telecommunications services was exempt from these formal contract letting processes, it did not publish notice other than through the posting of the 2005 Form 470 that clearly set forth the Priority One services sought on USAC's website.

The only bids Hemet received for Priority One services were from its existing service providers. As a result, after the expiration of the required 28-day waiting period, Hemet entered into contracts for telecommunications services with its existing

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[3] *Id.* at § 20112.

telecommunications service providers, including agreements with Verizon California executed on February 15, 2005 for CentraNet® telecommunications service and Transparent LAN Service (TLS).[4] The CentraNet service agreement had a term of three years, but provided for termination based on a mathematical calculation set forth in the agreement. The TLS service agreement had a term of 60 months, and also provided for termination according to a mathematical calculation set forth therein.

For Funding Year 2006, Hemet posted an FCC Form 470 request (No. 609890000570145) (the "2006 Form 470") on December 29, 2005, seeking telecommunications services, Internet access, internal connections, and basic maintenance services, because it believed that it was required to submit an FCC Form 470 on a yearly basis. The 2006 Form 470 specified the telecommunications services that Hemet required, namely local phone service (approximately 30 sites), long distance service (approximately 30 district locations), cellular service (approximately 150 phones), and data circuits (27 remote sites at 100Mbps, and one central site at 1000Mbps). The 2006 Form 470 indicated that an RFP for these services would be published on the Web and provided the URL where the RFP would be located.

Hemet again received no bids for the requested services. Based on this result, on January 30, 2006, after the expiration of the 28-day waiting period required by the Commission's rules, Hemet formally memorialized its decision to continue to rely on its existing service provider, Verizon California, as the provider of these services, *see* **Attachment D,** at 10-13. Based on this decision, Hemet submitted a FCC Form 471 for

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[4] In Funding Year 2006, Hemet sought support for services provided pursuant to these agreements in FRN 1409327 and 1409240, respectively.

Funding Year 2006 containing the funding requests that are the subject of this appeal, in each case referring to the 2005 Form 470 and the Verizon California service agreements executed on February 15, 2005. On February 15, 2006, Hemet filed FCC Form 471 for Funding Year 2006 seeking support for CentraNet and TLS services, pursuant to FRN 1409327 and 1409240, respectively.

After USAC approved these funding requests, on December 16, 2008, Hemet received notice that it had been selected for an audit by KPMG "to assess compliance with FCC Rules and to address requirements related to the Improper Payments Information Act."[5] As indicated in the letter, the scope of the audit was limited to "an evaluation of [Hemet's] compliance with 47 C.F.R. Part 54, Subparts C, D, J, and K, and Part 36, Subpart F Rules and applicable Orders."[6] Eleven of Hemet FRNs from Funding Years 2002, 2006, and 2007 were selected for audit, including FRN 1409240. The audit was subsequently broadened to include FRN 1409327.

The resulting audit report found, among other things, that Hemet's purchasing department "did not follow the publication advertisement required noted in the [CPCC] and the Beneficiary's Bidding Policies and Procedures."[7] Based on this finding, SLD issued a COMAD rescinding funding for the two affected FRNs, and affirmed that decision on appeal.

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5 Letter from Wayne M. Scott, Vice President, Internal Audit Division, USAC, to E-Rate Program Beneficiary (Nov. 14, 2008) ("Scott Letter"), at 1. See **Attachment E.**

6 *Id.*

7 Hemet Unified School District, Audit No. SL-2008-192, Independent Accountants' Report (Nov. 24, 2009), at Att. 2, p. 1 ("Accountants' Report"). See **Attachment F.**

Discussion

For the following reasons, the Commission should reverse the Decision and direct SLD to restore funding for the affected funding requests.

A. The Decision is contrary to Commission precedent allowing competent state and local authorities to decide questions within their jurisdiction

By basing the COMAD and the Decision on a finding that Hemet's procurement process violated the CPCC, the SLD Decision represents a marked departure from longstanding Commission precedent. For decades, the Commission has wisely chosen not to arrogate to itself responsibility to decide matters outside of its area of jurisdiction and expertise arising under state and local law.[8] The SLD impermissibly based the COMAD and the Decision on its conclusion that Hemet had violated the substantive requirements of California procurement laws. In doing so, SLD overstepped the boundaries of the Commission's jurisdiction and set a precedent that threatens quickly to overwhelm the limited resources of USAC, the Commission, and untold numbers of school districts.

First, even if it were established that Hemet violated the CPCC, such a violation does not constitute a violation of the FCC's rules governing the E-Rate program. Section 54.504(a) of the Commission's rules states, in relevant part, that the Part 54 federal competitive bid requirements – chiefly that each applicant must post FCC Form 470 through USAC's electronic portal, when required, and carefully consider all bids received using price as the primary evaluation factor, and select the most cost effective service offering – a service provider only after the expiration of the required 28-

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[8] *See, e.g., Listeners' Guild v. FCC*, 813 F.2d 465 (D.C. Cir. 1987).

day waiting period – "apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements," 47 C.F.R. § 54.504(a).[9] Contrary to the assertions of KPMG in the Accountants' Report and SLD in the COMAD and Decision,[10] this language does *not* create a federal obligation for applicants to follow state and local procurement laws. Rather, in adopting this rule, the Commission made clear its intent *not* to import the substance of the various requirements of state and local procurement laws into the Commission's Part 54 rules, choosing instead to preserve existing state and local obligations to comply with those laws. As the Commission then explained, "Commission action is not required because many individual schools and libraries operate under state and local procurement rules designed to achieve those objectives. Thus, although we do not impose bidding requirements, neither do we exempt eligible schools or libraries from compliance with any state or local procurement rules, such as competitive bidding specifications, with which they must *otherwise* comply."[11] Recently, the Commission reiterated this view. In proposing to eliminate the Form 470 filing requirement and 28-day waiting period for Priority One services, the Commission stated, "public schools and libraries are held accountable by state and local

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[9] In rule revisions that took effect on January 3, 2011, the Commission relocated this language to 47 C.F.R. § 54.503(b). Unless otherwise specified, citations in this Request for Review will refer to the prior version of the Commission's rules, which was in effect when the events discussed herein occurred.

[10] *See, e.g.,* Accountants' Report at Att. 2, p. 1; Decision at 2.

[11] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, 12 FCC Rcd. 8776, ¶ 482 (1997) (emphasis added) (subsequent history omitted).

authorities for violating state and local procurement regulations."[12] Similarly, in the *Ysleta Order*, the Commission confirmed that bare compliance with state and local procurement laws, without more, would not necessarily result in compliance with the federal competitive bidding rules imposed by the Commission, to the extent that the federal requirements were more stringent.[13]

The Decision also concludes that Hemet erroneously certified on its FCC Form 471 that it had complied with "all applicable FCC, state, and local procurement/competitive bidding requirements."[14] To the extent that SLD treated this conclusion as a basis for issuing the COMAD, such action is plainly impermissible. As discussed above, violations of state and local procurement laws do not constitute independent violations of the Commission's rules. To permit SLD to use this certification as authority to conduct its own investigations and make its own findings with regard to an applicant's compliance with state and local procurement requirements would admit through the back door the very obligations that the Commission has barred

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[12] *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking, FCC 10-83, 25 FCC Rcd. 6872, 6882 (2010).

[13] *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District*, *El Paso, Texas*, CC Docket NO. 96-45, Order, FCC 03-313, 18 FCC Rcd 26406, ¶ 42 (2003) ("*Ysleta Order*") ("Even if we assume that Ysleta's selection of IBM did not violate applicable state and local procurement law, such compliance would not automatically ensure compliance with our rules governing the selection of bidders in the E-rate program.").

[14] Decision at 2. In doing so, the Decision apparently affirms the COMAD's assertions, with respect to both FRNs at issue, that, "[o]n your FY 2002 FCC Form 470, you certified that you reviewed and complied with all FCC, state, and local procurement/competitive bidding requirements," COMAD at 3, 4. Whatever the relevance of the Form 471 certifications to this matter, SLD cannot possibly use any certification by Hemet in 2002, some three years before the earliest events at issue took place, a basis for the COMAD.

from the front. Rather, the Commission should clarify that SLD may find this certification in error only based on a final adjudication by a court or administrative body of competent jurisdiction that the applicant failed to comply with state or local procurement or competitive bidding requirements.

Such a finding would be consistent with the Commission's historical approach to private disputes that are properly within the jurisdiction of state or local authorities. The Commission is a federal administrative agency with limited jurisdiction created by its enabling statute, the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et. seq.* (the "Communications Act"). Its enforcement authority is necessarily limited to violations of the Communications Act and the Commission's implementing rules and orders. Private contractual disputes and the enforcement of state procurement and competitive bidding laws are outside of its statutory jurisdictional mandate. SLD's authority, which derives from that of the Commission, is similarly limited, as the Commission plainly cannot grant to SLD jurisdiction that it itself lacks.

Recognizing the practical and legal limitations on its ability to resolve private disputes and other matters arising under state law, the Commission routinely refuses to "interject itself into private matters, finding that a court, and not the Commission, is the proper forum to resolve such disputes."[15] Rather, the Commission generally adopts a "wait and see" posture with respect to ongoing litigation in the state courts.[16] Indeed, specifically in the context of operational SPIN changes, the Commission has refused to involve either itself or USAC in disputes where the original

[15] *Nextel Communications, Inc. and Sprint Corp.*, WT Docket No. 05-63, Order, FCC 05-148, 20 FCC Rcd 13967, at ¶ 181 and n.428 (2008).

[16] *Listeners' Guild*, 813 F.2d 465.

service provider challenges the billed entity's legal justification for terminating a contract with that provider, holding instead that, "in light of the Commission's longstanding policy of refusing to adjudicate private contract law questions for which a forum exists in the state courts, a state court and not the Commission is the appropriate forum for rendering such a determination."[17] Based on this policy, "the Commission has traditionally refrained from acting or deferred action in matters of alleged violations of local or state laws where the matters have not been presented to or acted upon by the authority charged with the responsibility of interpreting and enforcing those laws."[18]

Second, even if the Commission were to possess statutory authority to enforce state and local procurement and competitive bidding laws, it should continue to adhere to its historical practice of leaving such matters in the hands of competent state and local authorities. Neither the Commission nor USAC have adequate resources to become expert in all of these requirements in effect across each state and territory, and there is no need for them to do so. State and local governments have created an extensive set of courts, legislatures, executive, and administrative authorities charged with establishing and enforcing these requirements. The Commission should trust these authorities to operate properly and to ensure compliance, just as the state and local legislators who create the requirements do. To act otherwise would encourage

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[17] *Request for Review by Copan Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.,* CC Docket Nos. 96-45, 97-21, Order, FCC 00-100, 15 FCC Rcd 5498 (2000), at n.23.

[18] *Schools and Libraries Support Mechanism, Requests for Review of the Decision of the Universal Service Administrator by Bienville Parish School Board, Arcadia, Louisiana, et. al*, CC Docket No. 02-6, FCC 06-287, 21 FCC Rcd 1234 (Wir. Comp. Bur. 2006), at ¶ 6.

disappointed bidders to take their complaints to USAC or the Commission, not to the local authorities charged with interpreting and enforcing state and local procurement laws, either in order to gain extra leverage in connection with a bid protest, or based on "forum shopping" considerations as they seek a receptive audience for their complaints.

When USAC and the Commission render decisions on such matters, they also create a potentially dangerous body of "federal common law" interpreting state and local procurement and competitive bidding requirements. These decisions may, over time, diverge from the interpretations given to these requirements by the state and local authorities charged with interpreting and enforcing them. As discussed below, notwithstanding the opinion of the KPMG auditor (adopted by SLD in the Decision), the application of CPCC Sections 20111 and 20112 to the procurement of telecommunications services by California school districts is an area of considerable legal uncertainty. If the Commission were to attempt to resolve these questions, it would risk creating federal requirements that future California courts decline to impose. Applicants would then be caught between conflicting federal and state interpretations of the same statute. Disappointed bidders would be encouraged to "forum shop" their procurement complaints, bringing them before the FCC and USAC when they would plainly lack merit in the California courts. It was precisely these considerations that led the Supreme Court, in the seminal 1938 case of *Erie Railroad Co. v. Tompkins*, to overrule nearly a century of precedent, declaring:

> There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State, whether they be local in their nature or "general," be they commercial law or a

> part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts.[19]

The Supreme Court thus held that federal courts, when applying state law in cases of diversity jurisdiction, must apply the common law of the state, and not a body of "federal common law" established in the federal courts.

B. The Accountants' Report does not state any violation of the Commission's E-Rate rules, and does not provide a sufficient basis for the SLD's COMAD

The SLD improperly based its decision to issue a COMAD rescinding funding for FRN 1409240 and 1409327 on the opinion of a private auditor that Hemet's procurement of the underlying services "did not follow the publication advertisement requirement noted in the [CPCC] and the Beneficiary's Bidding Policies and Procedures."[20] In doing so, the SLD accepted, without further examination, that, "[CPCC] section 20111 and 20112 . . . requires school districts to publish a notice of all bids in some type of public circulation for at least once a week for two weeks which was not complied with by the Beneficiary."[21]

The SLD Decision affirmed this determination, reiterating that Hemet "was required to publish a notice of all bids in some type of public circulation for at least once a week for two weeks as per [CPCC] section 20111 and 20112,"[22] and concluding that Hemet had not made an adequate showing that it is exempt from this regulation. In doing so, SLD also brushed aside the fact that Hemet had, in fact, published notice that it

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19 *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, 78 (1938) (overruling *Swift v. Tyson*, 41 U.S. (16 Pet.) 1 (1842))

20 *Id.*

21 COMAD at 3 (see **Attachment C**).

22 Decision at 1.

was seeking bids for telecommunications services by posting Form 470 through the USAC electronic portal, which is the very place where an interested provider would expect to find such opportunities. SLD also brushed aside the fact that Hemet did, in fact, publish a separate Request for Proposal for Telecommunications Service in addition to its 2006 Form 470.[23] Under Commission policy established in the *Kalamazoo Order* and its progeny, SLD must examine Hemet's compliance with the Commission's Part 54 competitive bidding requirements in 2006, not 2005, in determining whether to issue a COMAD for the Funding Year 2006 FRNs that are the subject of this matter.[24]

The Decision thus should be reversed for two reasons. *First*, the Accountants' Report does not constitute a legal determination that Hemet failed to comply with the CPCC sufficient to support withdrawal of funding. Rather, the Accountants' Report contains the opinion of an auditor, who is not required to have any legal training. Recognizing this limitation, the Accountants' Report explicitly states that, "[o]ur examination does not provide a legal determination on [Hemet's] compliance with specified requirements."[25] As Hemet indicated in its response, "it is the opinion of Hemet . . . , in consultation with purchasing professionals at both the county level and at the State level, that telecommunications services, under regulation by the FCC and the California Public Utilities Commission (CPUC) are not subject to the competitive bidding requirements outlined in the [CPCC]," Accountants' Report, Att. 2 at 2.

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[23] Decision at 2.

[24] *See Request for Review of the Decision of the Universal Service Administrator by Kalamazoo Public Schools, Kalamazoo, Michigan*, CC Docket No. 96-45, Order on Reconsideration, DA 02-2975 (Wir. Comp. Bur. 2002), at ¶¶ 6-7 ("*Kalamazoo Order*").

[25] Accountants' Report at 1.

To resolve this disagreement, SLD requested no briefing, conducted no hearings, performed no independent investigation and, to Hemet's knowledge, sought no guidance from licensed California counsel with expertise in matters arising under CPCC Sections 20111 and 20112. Rather, it merely adopted the auditor's finding as its own, and imbued it with the very legal significance that the Accountants' Report disclaims. This SLD may not do.

Second, SLD's actions are even more egregious considering that the finding in the Accountants' Report that Hemet violated the CPCC is beyond the scope of KPMG's audit engagement. USAC engaged KPMG "to assess compliance with FCC Rules and to address requirements related to the Improper Payments Information Act."[26] As discussed above, compliance with state and local procurement and competitive bidding requirements is an obligation of state and local law; while violation of these requirements may expose an applicant to state and local penalties, it does not constitute an independent violation of the Commission's rules. As such, any examination of Hemet's compliance with CPCC Sections 20111 and 20112 was therefore beyond the scope of the USAC audit, and the FCC and USAC should give the auditor's findings in this regard no weight.

C. Even if the Commission were to consider the substance of Hemet's procurement activities, Hemet believes that these activities complied with applicable Commission, state, and local requirements

As Hemet explained, both in its response to the finding in the Accountants' Report and in its appeal to SLD, Hemet believes that February 15, 2005 contracts with Verizon California complied with the notice requirements of CPCC

[26] Scott Letter at 1.

Sections 20111 and 20112, based on commonly-accepted practices in California. At no time in 2005 or thereafter did Hemet received a complaint or bid protest in connection with the procurement process it followed. The only alleged violation stems from USAC's Accountants' Report, which, on its face, explicitly states that it does not constitute a legal determination regarding Hemet's compliance with these statutes.

Section 20111 contains numerous exceptions to its formal contract letting requirements, including for contracts for construction services, § 20111(a)(2), contracts below its monetary threshold, § 20111(a), and contracts for professional services and advice, insurance services, and other exempt services, § 20111(c). In addition, it is "well recognized" under California law that publication of a notice calling for bids is not required where such action "would be unavailing or would not produce an advantage."[27] Among such exceptional situations recognized in the past by California courts is the case of services provided by the holder of "a certificate by the Public Utilities Commission to provide . . . service to the area in question and the service rates and charges . . . were governed by a rate schedule approved by the Commission."[28]

Thus, SLD's assertion in the Decision that Hemet "was required to publish a notice of *all* bids in some type of public circulation for at least once a week for two weeks as per [CPCC] section 20111 and 20112"[29] is incorrect on its face. In particular, based on existing precedent, there is widespread belief among school districts in

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[27] *Graydon v. Pasadena Redevelopment Agency*, 164 Cal. Rptr. 56, 58 (Cal .Ct. App. 1980); *see also, e.g., County of Riverside v. Whitlock*, 99 Cal. Rptr. 710, 720 (Cal. Ct. App. 1972).

[28] *Riverside*, 99 Cal. Rptr. at 720.

[29] Decision at 1 (emphasis added).

California that the final exception identified above, *i.e.*, for "any other purchase or service otherwise exempt from this section" applies to regulated telecommunications services, at the very least to the extent that such services are available only from a single source. In 2005 and 2006, to Hemet's knowledge, only Verizon California provided service throughout Hemet's 740 square mile school district. That belief is supported by the fact that no competing provider had contacted Hemet to express an interest in providing such services, and no other provider submitted a bid in response either to Hemet's 2005 Form 470 or its subsequent 2006 Form 470. Further, as indicated in Hemet's response to the finding in the Accountants' Report, several previous KPMG audit teams have examined the procurement of telecommunications services in Riverside County and have not found that the advertising requirement applies to telecommunications services.[30] Although the Accountants' Report states that the KPMG auditor "spoke with another major service provider who indicated that they [sic] have been providing telecommunications services in that area since 2000," this statement is of no significance. Not only is it hearsay, but it also does nothing to refute Hemet's contention that Verizon California was the only provider to serve the *entire* district in 2005.

Hemet well recognizes that the federal Part 54 competitive bidding rules require it to seek competitive bids, even if the CPCC does not. For this reason, Hemet posted its Form 470 through the SLD's electronic portal, and concluded its contract with Verizon California only after expiration of the 28 day waiting period and after determining that Verizon California's was, in fact, the only proposal it received.

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[30] Accountants' Report, Att. 2, p. 3.

Even if Hemet were required to publish a notice calling for bids under CPCC Sections 20111 and 20112, Hemet's Form 470s themselves are capable of satisfying this requirement under existing Commission policy. As explained by the Commission, "[t]he applicant must provide this description [of the services it seeks] on its FCC Form 470 or indicate on the form that it has a Request for Proposal (RFP) available providing detail about the requested services."[31] Hemet's 2005 Form 470 specified the types and quantities of telecommunications services it sought, and no bidder sought greater clarity (as, in fact, no bidder other than Verizon California responded at all). It is undisputed that this Form 470 was posted through the SLD Form 470 electronic portal and remained open for the required period. As discussed below, such posting should satisfy the notice publication requirements of CPCC Section 20112.

In any event, under Commission policy established in the *Kalamazoo Order* and its progeny, SLD must examine Hemet's compliance with the Commission's Part 54 competitive bidding requirements in 2006, not 2005, in determining whether to issue a COMAD for the Funding Year 2006 FRNs at issue here.[32] In the *Kalamazoo Order*, the Commission made clear that an applicant may treat its existing contract as one offer in response to a subsequent call for competitive bids. After providing the requisite 28 days and carefully considering all bids received, the applicant may determine that the best available option is contained in its existing contract. In such a case, the *Kalamazoo Order* directs applicants "to memorialize their decision to continue the service and enter

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[31] *Requests For Review Of The Decisions Of The Universal Service Administrator By Approach Learning And Assessment Center Santa Ana, CA, et. al.*, CC Docket 02-6, Order, DA 07-1332, 22 F.C.C.R. 5296, ¶ 4 (2007).

[32] *See Kalamazoo Order* at ¶¶ 6-7.

the date of this memorialization as the contract award date of the renewed contract in their FCC Form 471."[33]

Hemet posted its 2006 Form 470 on December 29, 2005, and posted an RFP dated December 20, 2005, on the Internet where it appeared (and still appears) at the web site identified in the 2006 Form 470, http://husd.edimensionconsulting.com (visited July 19, 2011). CPCC Section 20112 permits publication of bidding notices both in local newspapers and through online portals. The California legislature and judicial authorities are best positioned to determine how best to effectuate the intent of the antiquated provisions in CPCC Section 20112 governing publication of bidding notices in local newspapers.[34] It should be beyond cavil, however, that the notice Hemet provided – through the SLD Form 470 online portal and its RFP posted online as the web site indicated therein – is at least as likely to provide actual notice to interested bidders as would notices printed in a local newspaper. Indeed, the Commission recently found this to be the case.[35]

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[33] *Kalamazoo Order* at ¶ 7.

[34] For example, numerous newspapers today have moved to an online-only format, and no longer circulate paper copies. In many cases, these web sites differ from others only in that they retain the name of a publication formerly distributed in paper form. If publication of notices in such online newspapers is permissible under the statute, then publication through another web site specifically identified in Hemet's Form 470 should be equally permissible. Fortunately for the Commission, these are questions for the California authorities charged with enacting and enforcing the statute.

[35] *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Sixth Report and Order, FCC 10-175, 25 FCC Rcd 18762 (2010), at ¶ 71 ("[R]equiring the FCC Form 470 produces a better competitive bidding process. Currently, schools and libraries are required to post an FCC Form 470 to USAC's website so that service providers easily can view the services that are requested in one centralized location . . . . The nationwide posting on USAC's website ensures that more service providers can obtain notice about the requests for bids.").

While accepting that the RFP Hemet published in connection with its 2006 Form 470 was capable in principle of satisfying the requirement of CPCC Section 20112 to publish a "notice calling for bids," SLD erroneously held that Hemet had violated Commission competitive bidding rules by determining to continue to receive service under its existing contract instead of executing a new one. In doing so, SLD disregarded nearly a decade of Commission precedent established under the *Kalamazoo Order* and its progeny. Here, Hemet's 2006 Form 470 carried an allowable contract date of January 26, 2006. On January 30, 2006, Hemet formally memorialized its decision to continue receiving services under its existing contract, in light of the fact that it had received no alternative bids.[36]

Hemet's Funding Year 2006 Form 471 (No. 512341) referred to the 2005 Form 470 and the original February 15, 2005 contract award date. While the *Kalamazoo Order* cautioned that, if an applicant enters the original contract award date after conducting a subsequent procurement, "SLD may well conclude from this information that a competitive bidding violation has occurred," the Commission has not held that it is fatal to the applicant's request for funding to do so. To the contrary, it has held in similar circumstances that the use of the original contract date is a "ministerial error" that USAC should allow applicants to correct.[37]

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[36] See **Attachment D.**

[37] *Requests For Review of the Decision of the Universal Service Administrator by Pasadena Unified School District, Pasadena, California*, CC Docket No. 02-6, Order, DA 06-486, 21 FCC Rcd. 2116 (Wir. Comp. Bur. 2006), at 2119 ("USAC also failed to consider Pasadena's 2004 Authorization, which replaced the 2000 Authorization to Order. USAC simply denied Pasadena's funding request, based on a surface-level application of the 28-day rule . . . . [R]easonable inquiry by USAC and better communication between USAC and the applicant could have resolved the issues that

As indicated in the Decision, Hemet attempted to amend its 2006 Form 471 to refer back to the 2006 Form 470 and specify the January 30, 2006 contract date. SLD inexplicably refused to permit this amendment, stating in the Decision that only that, "this [2006] Form 470 has an allowable contract date of January 26, 2006." Consistent with the Commission's longstanding policies adopted in the *Kalamazoo Order* and its progeny, the Commission should reverse the Decision and direct SLD to permit Hemet to substitute the January 30, 2006 contract date in the affected FRNs in its 2006 Form 471.

D. In the alternative, if the Commission finds that Hemet violated Commission rules, Hemet requests a waiver to avoid the undue hardship that SLD recovery of the support would cause

As demonstrated above, the Commission should reverse the Decision because it is not the role of the Commission to enforce the substance of state and local procurement codes, because there has been no state court adjudication that Hemet violated CPCC Section 20111 or 20112, and because, even if the Commission were to

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we now face in these Requests for Review. While we have previously noted that the burden of timely and accurately filing rests with the applicant, we are compelled to remind USAC that it retains an obligation to conduct a reasonable inquiry into the filings and materials that USAC itself has in its possession.") and 2120 n.32 ("If USAC's interpretation of Pasadena's filing were correct, and Pasadena had entered into an agreement more than three years before the allowable contract date, USAC still should have more clearly communicated the problem and worked with Pasadena to determine the reason for the discrepancy, particularly in light of the fact that USAC had missed such discrepancies in previous filings. Even given its limited role and lack of discretion as to substantive matters, *USAC could have at least used reasonable efforts to allow correction of what appears to be a ministerial error*, rather than to threaten Pasadena Unified School District, which has several schools receiving funding at the 90-percent level, with the loss of more than $300,000 in funding, without adequate inquiry or explanation.") (emphasis added). Indeed, by omitting the COMAD's reference to Hemet's Funding Year 2002 Form 471 when it issued the Decision, SLD appears to have attempted to correct its own "ministerial error."

accept responsibility for adjudicating such violations, Hemet's actions complied with the applicable Commission and California legal requirements.

If the Commission nevertheless determines that its rules permit it to enforce the substantive provisions of California law; and that Hemet violated the requirements of CPCC Sections 20111 and 20112; and that Hemet's actions do not fall within the exception for situations where publication of such a notice would be unavailing or would not produce an advantage; then Hemet respectfully requests a waiver of the Commission rules, to the extent of the resulting violation.

The FCC's rules require a party to demonstrate "good cause" when seeking a waiver. 47 C.F.R. § 1.3. In general, to make this showing, the FCC requires an applicant to demonstrate that special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.[38]

Both prongs of the waiver test are met here. *First*, Hemet faces special circumstances justifying a waiver in light of the ongoing financial and debt crises being faced by federal, state and local governmental agencies nationwide. Hemet faces extreme budget pressures that, even putting aside the COMAD, will create significant challenges as it seeks to fulfill its educational mission. Hemet is facing year-over-year budget cuts of 20 percent, and faces a structural deficit of between $2 million and $8 million annually. The COMAD, rescinding nearly an additional $500,000 on the heels of these other cuts, would be a heavy blow.

Second, the public interest clearly warrants a waiver. Even assuming for

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[38] *WAIT Radio v. FCC,* 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

the sake of argument that Hemet's failure to publish notice of its 2006 RFP in a printed local newspaper violates CPCC Section 20112, it is wholly disproportional for SLD to issue a COMAD for the entire funding commitment, especially in light of the fact that any interested bidders would have been more likely to seek notice from the Form 470 database, and that no other provider has come forward seeking to provide the requested services. Moreover, it would create substantial inequities in today's difficult and financially uncertain times to force Hemet to repay nearly $500,000 in support at this late date, long after the services have been funded, purchased, used, and paid-for. Such recovery would cause grave injury to the educational opportunities of needy Hemet students today, a result that runs directly contrary to the entire purpose of the schools and libraries universal service support program.

With respect to the FRNs at issue here, Hemet has complied with the substance of the Commission's competitive bidding rules. Further, there is no allegation that Hemet's actions resulted from or caused any waste, fraud, or abuse involving federal funds. In the absence of any final adjudication by a California court of competent jurisdiction that Hemet violated the requirements of CPCC Section 20111 and 20112, there is no basis on which to sustain the COMAD.

Conclusion

For the foregoing reasons, Hemet urges the Commission to review and reverse the Decision of the SLD in this matter, and direct SLD to restore funding for FRNs 1409240 and 1409327.

Respectfully submitted,

Vincent Christakos
Assistant Superintendent
Business Services
Hemet Unified School District
1791 W. Acacia Avenue
Hemet, California 92545

Dated: July 25, 2011

Attachment A

Emil

USAC

Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2006-2007

BUSINESS SERVICES
MAY 31 2011

May 26, 2011

Vincent Christakos
Hemet Unified School District
1791 W. Acacia Ave.
Hemet, CA 92545

Re: Applicant Name:	HEMET UNIFIED SCHOOL DISTRICT
Billed Entity Number:	143751
Form 471 Application Number:	512341
Funding Request Number(s):	1409240, 1409327
Your Correspondence Dated:	March 21, 2011

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2006 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s):	1409240, 1409327
Decision on Appeal:	**Denied**
Explanation:	

- During an audit, USAC determined that Hemet Unified School District was required to publish a notice of all bids in some type of public circulation for at least once a week for two weeks as per California Public Contract Code (CPPC) section 20111 and 20112. In response, the authorized contact stated that the District is exempt from the regulation. Therefore, the district was given the opportunity to provide documentation showing how the district determined it was exempt, but the response during initial review and in your appeal letter failed to show that USAC's determination was incorrect. Additionally, you state that CPCC Section 20112 allows the option of posting a notice calling for bids on the district's website or through an electronic portal and provide the website address to show the procurement rule was met. However, these FRNs are referencing FY2005 Form 470, 657340000509508, which was not listed on the website. Therefore, the authorized contact was given the opportunity to provide documentation showing that this FY2005 Form 470 was posted on the district's website or some other location. In response, the authorized contact stated that the referenced Form 470 was incorrect and that the correct establishing Form 470 is Form 470 #609890000570145. However, this Form 470 has an allowable contract date of January 26, 2006. The contracts for these FRNs were awarded February 15, 2005. On the FCC Form 471, the applicant certified that the entity responsible for selective the service provider(s) has reviewed all applicable FCC, state and local procurement/competitive bidding requirements and that the entity or entities listed on this application have complied with them. Since the applicant failed to comply with local and state procurement laws, the applicant violated the competitive bidding process. The applicant has failed to provide evidence on appeal that the USAC erred in its original decision. Consequently, the appeal is denied.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Attachment B

Dr. Steven A. Lowder
Superintendent

Dr. LaFaye Platter
Deputy Superintendent
Dr. Sally Cawthon
Assistant Superintendent
Vincent Christakos
Assistant Superintendent

Professional Development
Service Center
1791 W. Acacia Avenue
Hemet, CA 92545
(951) 765-5100
Fax: (951) 765-5115

Professional Development
Academy
2085 W. Acacia Avenue
Hemet, CA 92545
(951) 765-5100
Fax: (951) 765-6421

www.hemetusd.k12.ca.us

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685
appeals@sl.universalservice.org
FAX: 1-973-599-6542

March 21, 2011

RE: Appeal of January 24, 2011 Notification of Commitment Adjustment Letter

Applicant:	Hemet Unified School District 1791 W Acacia Ave Hemet, CA 92545 951-765-5100
Contact:	John Mollway 40335 Winchester Rd Suite E522 Temecula, CA 92591 951-249-3346 (Voice) 866-837-6612 (Fax) erate@hemetusd.k12.ca.uis
BEN:	143751
Form 471:	512341
FRN:	1409240 and 1409327
SPIN:	143004769
Funding Year:	2006

To Whom It May Concern:

This letter is written to appeal the Funding Year 2006 Notification of Commitment Adjustment Letter (COMAD) from the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) dated January 24, 2011. The Hemet Unified School District (HUSD) respectfully requests reconsideration on this matter for the following reasons.

HUSD secured the telecommunications services affected by this COMAD in compliance with E-rate program rules and the prevailing industry standard procurement practices for telecommunications services[1] in California.

[1] A survey conducted by Hemet Unified School District on March 10, 2011 found that 64% of responding California School Districts have never formally bid telecommunications services related to E-rate funding requests.

The COMAD letter decision is based on KPMG's assertion that the district failed to comply with "California Public Contract Code (CPCC) [*sic*] section 20111 and 20112 which requires schools districts to publish a notice of all bids in some type of public circulation for at least once a week for two weeks".

The CPCC states the following.

> 20111. (a) The governing board of any school district, in accordance with any requirement established by that governing board pursuant to subdivision (a) of Section 2000, shall let any contracts involving an expenditure of more than fifty thousand dollars ($50,000) for any of the following:
> (1) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district.
> (2) *Services*, except construction services.
> (3) Repairs, including maintenance as defined in Section 20115, that are not a public project as defined in subdivision (c) of Section 22002.
>
> 20111. (c) This section applies to all equipment, materials, or supplies, whether patented or otherwise, and to contracts awarded pursuant to subdivision (a) of Section 2000. *This section shall not apply to professional services* or advice, insurance services, **or any other purchase or service otherwise exempt from this section**, or to any work done by day labor or by force account pursuant to Section 20114.

It is a generally accepted practice and industry standard in California to exempt sole source providers and utilities from formal bidding. A survey of school districts showed that the majority of districts did not bid utility services (including Telco services) in 2006. These services have traditionally only been available from one provider in a given geographic area. Only recently has the market for these services started to open up to more than one provider. In 2006 Hemet Unified School District believed that there were no other providers of telephone services that could cover the district's 740 square miles of territory and therefore considered Verizon as a sole source provider of the services.

CPCC Section 20112 allows the option of posting a notice calling for bids on the district's Web site or through an electronic portal (for example, the SLD web site). For this reason, the district also believes that it complies with the E-rate program rules and CPCC by having posted a notice calling for bids on both a district web site http://husd.edimensionconsulting.com and the SLD web site http://usac.org/sl.

The standard procurement practices of not bidding utilities to include telecommunication services have never been challenged by the two agencies responsible for oversight to ensure disbursements are legally made, the Riverside County Office of Education or County Treasurer. The district has never received a challenge from any other utility or Telco Company that it did not bid the services. These facts clearly establish a well-known practice by the vast majority of school districts in California that utility services (to include telecommunications) are rarely bid because they have been considered services that have been only available from one provider in a geographic area.

For these reasons the Hemet Unified School District requests that USAC reverse the decision of the January 24, 2011 Notification of Commitment Adjustment Letter.

Sincerely,

Vincent Christakos, Assistant Superintendent
Business Services

Attachment C

USAC
Universal Service Administrative Company

E-Rate 9

Schools and Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2006: July 1, 2006 - June 30, 2007

January 24, 2011

Emil Basilio
HEMET UNIFIED SCHOOL DISTRICT
2350 W LATHAM AVE
HEMET, CA 92545 3654

Re: Form 471 Application Number:	**512341**
Funding Year:	**2006**
Applicant's Form Identifier:	**HUSD-Telco**
Billed Entity Number:	**143751**
FCC Registration Number:	**0012873162**
SPIN:	**143004769**
Service Provider Name:	**Verizon California Inc.**
Service Provider Contact Person:	**Francie Rollins**

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.

2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
•Billed Entity Name,
•Form 471 Application Number,
•Billed Entity Number, and
•FCC Registration Number (FCC RN) from the top of your letter.

3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.

4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.

5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Francie Rollins
Verizon California Inc.

E-Rate 9

Funding Commitment Adjustment Report for
Form 471 Application Number: 512341

Funding Request Number:	1409240
Services Ordered:	TELCOMM SERVICES
SPIN:	143004769
Service Provider Name:	Verizon California Inc.
Contract Number:	2005-310526, 2005-310551
Billing Account Number:	951 765-5100
Site Identifier:	143751
Original Funding Commitment:	$383,130.00
Commitment Adjustment Amount:	$383,130.00
Adjusted Funding Commitment:	$0.00
Funds Disbursed to Date	$325,874.66
Funds to be Recovered from Applicant:	$325,874.66

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. On your FY 2002 FCC Form 470, you certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. During the course of an audit, it was determined that you failed to comply with all FCC, state and local procurement/competitive bidding requirements. This determination was based on the requirement of California Public Contract Code (CPPC) section 20111 and 20112 which requires schools districts to publish a notice of all bids in some type of public circulation for at least once a week for two weeks which was not complied with by the Beneficiary. The FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to comply with local and state procurement laws you violated the competitive bidding process. Accordingly, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

Funding Request Number:	1409327
Services Ordered:	TELCOMM SERVICES
SPIN:	143004769
Service Provider Name:	Verizon California Inc.
Contract Number:	N/A
Billing Account Number:	951 197-9219
Site Identifier:	143751
Original Funding Commitment:	$154,574.82
Commitment Adjustment Amount:	$154,574.82
Adjusted Funding Commitment:	$0.00
Funds Disbursed to Date	$152,690.98
Funds to be Recovered from Applicant:	$152,690.98

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. On your FY 2002 FCC Form 470, you certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. During an audit, it was determined that you failed to comply with all FCC, state and local procurement/competitive bidding requirements. This determination was based on the requirement of California Public Contract Code (CPPC) section 20111 and 20112 which requires schools districts to publish a notice of all bids in some type of public circulation for at least once a week for two weeks which was not complied with by the Beneficiary. The FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to comply with local and state procurement laws you violated the competitive bidding process. Accordingly, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

Attachment D

Hemet USD

Created : January 13, 2009 at 04:13 PM

Meeting: Regular Meeting of the Governing Board of the Hemet Unified School District : K - Consent Items

37. K-37 Erate - Award Contracts

February 07, 2006

Quick Summary/Recommended Action
Authorization to award contracts for Erate services to Spectrum Communications for internal connections; Sprint (Nextel) for telecommunications, cellular service; and Dell for internal connections and servers.

Summary
Per federal E-rate guidelines, requests for products and services were advertised for a minimum of 28 days for Internal Connections, telecommunications, Internet Access and Basic Maintenance. Proposals were due January 26, 2006. The following schools were included in the 2006-2007 E-rate applications based on need and Free and Reduced eligibility:

- Acacia Middle
- Alessandro High
- Bautista Creek Elementary
- Cottonwood
- Dartmouth Middle
- Fuitvale Elementary
- Hamilton Elementary
- HELP
- Hemet Elementary
- Ramona Elementary
- Santa Fe Middle
- Tahquitz High
- West Valley High
- Whittier Elementary
- Winchester Elementary

Proposals were evaluated using the following criteria:
Price 35%
Accuracy of response to RFP requirements 20%
Compatibility with District standards 15%
Experience (K12, E-rate, HUSD) 15%
Vendor certifications/Licenses/Contracts 10%
References 5%

The following vendors provided the most cost effective proposals in the categories indicated:

Staff recommends the following vendors:
1. Spectrum Communications – Internal Connections, including cabling, electronics, wireless LAN and basic hardware maintenance.
2. Sprint (Nextel) – Telecommunications, Cellular service.
3. Dell – Internal Connections, Servers.

Verizon will continue to provide telecommunications services including Internet Access, Wide Area Network circuits, local phone and long distance phone service under an existing multi-year contract.

Fiscal Implications
Contracts costs budgeted from the General Fund will be offset by reduction and rebates of service rates.

Oral Report Assigned To:
Richard Beck, Assistant Superintendent Business Services

Associated File Attachments
Erate - Vendor Selection Worksheet (Files)

Minutes
Approved authorization to award contracts for Erate services to Spectrum Communications for internal connections; Sprint (Nextel) for telecommunications, cellular service; and Dell for internal connections and servers.

Internal Connections - Cabling

Recommended Vendor Selection - Spectrum

CNC	**Weight**	**Score**	**Weighted Score**	**Comments**
Price	35%	8	2.8	$1,537,066.44
Accuracy of response to RFP requirements	20%	7	1.4	Average cable length 198' - not per RFP (`$95,000 difference)
Compatibility with District standards	15%	7	1.05	Included fiber & cabinets at all schools (Still costs more without)
Experience (K12, E-rate, HUSD)	15%	8	1.2	No Molex indicated
Vendor certifications/Licenses/Contracts	10%	10	1	No Voice cabling
References	5%	10	0.5	Most identical line items higher priced
Total	**100%**	**50**	**7.95**	

Spectrum	**Weight**	**Score**	**Weighted Score**	**Comments**
Price	35%	9	3.15	$1,168,683.11
Accuracy of response to RFP requirements	20%	8	1.6	Average cable length 248' - per RFP (~$98,000 difference)
Compatibility with District standards	15%	10	1.5	Molex parts identified
Experience (K12, E-rate, HUSD)	15%	10	1.5	
Vendor certifications/Licenses/Contracts	10%	10	1	Most identical items lower priced
References	5%	10	0.5	
Total	**100%**	**57**	**9.25**	

NOTES:

CNC Cable Lengths	Feet	Drops	Ft per drop		
Dartmouth	49350	282	175	$	6,401.50
Alessandro	23100	132	175	$	3,069.00
Bautista	63000	360	175	$	8,370.00
Fruitvale	43050	246	175	$	5,719.50
Acacia	93000	465	200	$	7,207.50
Cottonwood	36465	187	195	$	3,188.35
Winchester	65130	334	195	$	5,694.70
West Valley	308880	1404	220	$	13,057.20
Ramona	41730	214	195	$	3,648.70
Hamilton Elem	37440	192	195	$	3,273.60
Whittier	75075	385	195	$	6,564.25
Santa Fe	88660	403	220	$	3,747.90
HELP	21875	125	175	$	2,906.25
Tahquitz	222885	1143	195	$	19,488.15
Hemet Elem	46550	266	175	$	2,309.50
	1216190	6138	198.1410883	$	94,646.10

Spectrum Cable Lengths	Feet	Drops	Ft per drop		
Dartmouth	70000	286	244.7552448	$	6,608.00
Alessandro	33000	137	240.8759124	$	3,168.00
Bautista	90000	363	247.9338843	$	8,640.00
Fruitvale	61500	249	246.9879518	$	5,904.00
Acacia	116250	470	247.3404255	$	7,440.00
Cottonwood	46750	191	244.7643979	$	3,291.20
Winchester	83500	337	247.7744807	$	5,878.40
West Valley	351000	1409	249.112846	$	13,478.40
Ramona	53500	217	246.5437788	$	3,766.40
Hamilton Elem	48000	195	246.1538462	$	3,379.20
Whittier	96250	388	248.0670103	$	6,776.00
Santa Fe	100750	407	247.5429975	$	3,868.80
HELP	31250	129	242.248062	$	3,000.00
Tahquitz	285750	1148	248.9111498	$	20,116.80
Hemet Elem	54000	219	246.5753425	$	2,384.00
	1521500	6145	247.5996745	$	97,699.20

Notes:

At Tahquitz, if you add $19,488 for CAT6 and $9,846 for Voice cabling (not counting labor) to CNC's total their comparable price would be ~$267,598
At HELP, if you add $2,906 for CAT6 and $1,178 for Voice cabling (not counting labor) to CNC's total their comparable price would be ~$39,809
At West Valley, if Fiber and cabinet costs of $25,840 are subtraceted from CNC their comparable materials price would be $151,978
At West Valley, Spectrum's material price is $140,076
At Acacia, if fiber and cabinet costs of $20,563 are subtracted from CNC their comparable maretials price would be $50,083
At Acacia, Spectrums material price is $47,354
Summary: After subtracting fiber and cabinet material costs, then adding CAT6 costs, CNC consistantly prices out higher that Spectrum

Internal Connections - LAN Hardware

Recommended Vendor Selection - Spectrum

CNC	**Weight**	**Score**	**Weighted Score**	**Comments**
Price	35%	7	2.45	$661,050.61 w/ wireless
Accuracy of response to RFP requirements	20%	10	2	$621,377.27 w/o wireless
Compatibility with District standards	15%	10	1.5	
Prior Experience (K12, E-rate, HUSD)	15%	8	1.2	
Vendor certifications/Licenses/Contracts	10%	10	1	
References	5%	10	0.5	
Total	**100%**	**55**	**8.65**	

Siemens	**Weight**	**Score**	**Weighted Score**	**Comments**
Price	35%	5	1.75	$754,774.50 w/ wireless
Accuracy of response to RFP requirements	20%	10	2	$682,557.00 w/o wireless
Compatibility with District standards	15%	8	1.2	3Com 1 year limited warranty
Prior Experience (K12, E-rate, HUSD)	15%	9	1.35	PoE Module options
Vendor certifications/Licenses/Contracts	10%	10	1	
References	5%	10	0.5	
Total	**100%**	**52**	**7.80**	

Spectrum	**Weight**	**Score**	**Weighted Score**	**Comments**
Price	35%	9	3.15	$546,149.13 w/ wireless
Accuracy of response to RFP requirements	20%	10	2	$523,067.75 w/o wireless
Compatibility with District standards	15%	10	1.5	
Prior Experience (K12, E-rate, HUSD)	15%	10	1.5	
Vendor certifications/Licenses/Contracts	10%	10	1	
References	5%	10	0.5	
Total	**100%**	**59**	**9.65**	

NOTES:

Spectrum Wireless		AP's
Dartmouth	$ 1,619.75	4
Alessandro	$ 2,024.68	5
Bautista	$ 1,214.81	3
Fruitvale	$ 1,214.81	3
Acacia	$ 2,024.68	5
Cottonwood	$ 2,024.68	5
Winchester	$ 1,214.81	3
West Valley	$ 2,024.68	5
Ramona	$ 1,214.81	3
Hamilton Elem	$ 1,214.81	3
Whittier	$ 1,214.81	3
Santa Fe	$ 1,619.75	4
HELP	$ 1,214.81	3
Tahquitz	$ 2,024.68	5
Hemet Elem	$ 1,214.81	3
	$ 23,081.38	57

CNC Wireless		AP's
Dartmouth	$ 2,784.09	4
Alessandro	$ 3,480.12	5
Bautista	$ 2,088.07	3
Fruitvale	$ 2,088.07	3
Acacia	$ 3,480.12	5
Cottonwood	$ 3,480.12	5
Winchester	$ 2,088.07	3
West Valley	$ 3,480.12	5
Ramona	$ 2,088.07	3
Hamilton Elem	$ 2,088.07	3
Whittier	$ 2,088.07	3
Santa Fe	$ 2,784.09	4
HELP	$ 2,088.07	3
Tahquitz	$ 3,480.12	5
Hemet Elem	$ 2,088.07	3
	$ 39,673.34	57

Internal Connections - Wireless

Recommended Vendor Selection - Spectrum

CNC	Weight	Score	Weighted Score	Comments	
Price	35%		0	$	39,673.34
Accuracy of response to RFP requirements	20%		0	57 AP's	
Compatibility with District standards	15%		0		
Experience (K12, E-rate, HUSD)	15%		0		
Vendor certifications/Licenses/Contracts	10%		0		
References	5%		0		
Total	**100%**	**0**	**0.00**		

Spectrum	Weight	Score	Weighted Score	Comments	
Price	35%		0	$	23,081.38
Accuracy of response to RFP requirements	20%		0	57 AP's	
Compatibility with District standards	15%		0		
Experience (K12, E-rate, HUSD)	15%		0		
Vendor certifications/Licenses/Contracts	10%		0		
References	5%		0		
Total	**100%**	**0**	**0.00**		

Siemens	Weight	Score	Weighted Score	Comments	
Price	35%		0		$72,214.50
Accuracy of response to RFP requirements	20%		0	57 AP's	
Compatibility with District standards	15%		0	Controller	
Experience (K12, E-rate, HUSD)	15%		0		
Vendor certifications/Licenses/Contracts	10%		0		
References	5%		0		
Total	**100%**	**0**	**0.00**		

Note: Wireless LAN is included in Hardware evaluation. This page was used to determine if wireless should be considered separately.

Basic Maintenance - Basic Maintenance

Recommended Vendor Selection - Spectrum

CNC	Weight	Score	Weighted Score	Comments
Price	35%		0	$10,477.88
Accuracy of response to RFP requirements	20%		0	Gold Support on BigIrons
Compatibility with District standards	15%		0	
Experience (K12, E-rate, HUSD)	15%		0	
Vendor certifications/Licenses/Contracts	10%		0	
References	5%		0	
Total	**100%**	**0**	**0.00**	

Spectrum	Weight	Score	Weighted Score	Comments
Price	35%		0	$3,053.20
Accuracy of response to RFP requirements	20%		0	Bronze Support on BigIrons
Compatibility with District standards	15%		0	
Experience (K12, E-rate, HUSD)	15%		0	
Vendor certifications/Licenses/Contracts	10%		0	
References	5%		0	
Total	**100%**	**0**	**0.00**	

Servers

Recommended Vendor Selection - Dell

Dell	**Weight**	**Score**	**Weighted Score**	**Comments**
Price	35%		0	Dell is the only service provider to submit a proposal.
Accuracy of response to RFP requirements	20%		0	Dell is selected as service provider.
Compatibility with District standards	15%		0	
Experience (K12, E-rate, HUSD)	15%		0	
Vendor certifications/Licenses/Contracts	10%		0	
References	5%		0	
Total	**100%**	**0**	**0.00**	$ 46,617.48

Cellular

Recommended Vendor Selection - Sprint (Nextel)

Sprint (Nextel)	**Weight**	**Score**	**Weighted Score**	**Comments**
Price	35%		0	Sprint is the only service provider to submit a proposal.
Accuracy of response to RFP requirements	20%		0	Sprint is selected as service provider.
Compatibility with District standards	15%		0	
Experience (K12, E-rate, HUSD)	15%		0	
Vendor certifications/Licenses/Contracts	10%		0	
References	5%		0	
Total	**100%**	**0**	**0.00**	

Nextel National 400	$	2,885.52	
Nextel Add-on	$	1,016.18	
	$	3,901.70	Monthly
	$	46,820.40	Annual
	$	5,618.45	Estimated taxes/fees
	$	**52,438.85**	**Estimated Total**

Wide Area Network Circuits

Recommended Vendor Selection - Verizon

Verizon	Weight	Score	Weighted Score	Comments
Price	35%		0	No proposals were received.
Accuracy of response to RFP requirements	20%		0	Will continue with existing service provider, Verizon.
Compatibility with District standards	15%		0	
Experience (K12, E-rate, HUSD)	15%		0	
Vendor certifications/Licenses/Contracts	10%		0	
References	5%		0	
Total	**100%**	**0**	**0.00**	

Local Phone

Recommended Vendor Selection - Verizon

Verizon	**Weight**	**Score**	**Weighted Score**	**Comments**
Price	35%		0	No proposals were received.
Accuracy of response to RFP requirements	20%		0	Will continue with existing service provider, Verizon.
Compatibility with District standards	15%		0	
Experience (K12, E-rate, HUSD)	15%		0	
Vendor certifications/Licenses/Contracts	10%		0	
References	5%		0	
Total	**100%**	**0**	**0.00**	

Long Distance

Recommended Vendor Selection - Verizon

Verizon	**Weight**	**Score**	**Weighted Score**	**Comments**
Price	35%		0	No proposals were received.
Accuracy of response to RFP requirements	20%		0	Will continue with existing service provider, Verizon.
Compatibility with District standards	15%		0	
Experience (K12, E-rate, HUSD)	15%		0	
Vendor certifications/Licenses/Contracts	10%		0	
References	5%		0	
Total	**100%**	**0**	**0.00**	

Internet Access

Recommended Vendor Selection - Verizon

Verizon	**Weight**	**Score**	**Weighted Score**	**Comments**
Price	35%		0	No proposals were received.
Accuracy of response to RFP requirements	20%		0	Will continue with existing service provider, Verizon.
Compatibility with District standards	15%		0	
Experience (K12, E-rate, HUSD)	15%		0	
Vendor certifications/Licenses/Contracts	10%		0	
References	5%		0	
Total	**100%**	**0**	**0.00**	

Evaluation Summary and Recommendations

Project	Recommended Vendor Selection	Estimated Costs	Notes/Comments
Hardware	Spectrum	$ 546,149.13	
Cabling	Spectrum	$ 1,168,683.11	
Wireless	Spectrum	inc. in Hardware	
Maintenance	Spectrum	$ 3,053.20	
Servers	Dell	$ 46,617.48	
Cellular	Sprint (Nextel)	$ 52,438.85	Estimated, including taxes/fees, excluding overages
WAN	Verizon		Addendum to existing 5 year contract required to add new sites
Local Phone	Verizon		Continue with existing 3 year contract
Long Distance	Verizon		Continue with existing 3 year contract
Internet Access	Verizon		Continue with existing 3 year contract

Attachment E

KPMG

KPMG LLP
1660 International Drive
McLean, VA 22102

Telephone 703 286- 8000
Fax 703-286- 8010
Internet www.us.kpmg.com

12/16/2008

Hemet Unified School District
Attn: Dr. Phil Pendley
Emil Basilio
1791 W Acacia Ave
Hemet, CA 92545

Dear Schools and Libraries Program Beneficiary:

The attached letter from Universal Service Administrative Company's (USAC) Internal Audit Division (Attachment A) states that USAC has engaged various audit firms to perform compliance attestation examinations of recipients of Schools & Libraries (S&L) Program funds. The Federal Communications Commission's Office of the Inspector General (FCC OIG) is overseeing these examinations and expects your full and complete cooperation during the examination (see the FCC OIG's letter at Attachment B).

KPMG LLP has been selected to conduct the examination of the Hemet Unified School District; Beneficiary Number 143751. We are planning to perform this examination within the months of January and February. We anticipate that fieldwork at your location will take approximately four weeks. However, our ability to complete the examination within that number of weeks will depend on the availability of your staff and the documentation made available to us both prior to our arrival at your location and during the rest of the examination.

While all disbursements from the Universal Service Fund made during the period July 1, 2007 through June 30, 2008 are subject to our examination, we have pre-selected the following disbursements for detailed testing:

FUNDING YEAR(s)	FORM 471 NO.	FRN(s)	AMOUNT DISBURSED
2007	554049	1588367	$192,077.94
2007	554046	1528513	$16,770.55
2006	515072	1417005	$47,468.71
2006	512341	1409240	$325,874.66
2002	295589	792804	$9,360.00
2002	295589	792670	$325,038.96
2002	295589	792640	$33,920.71
2002	295589	792635	$8,451.86
2002	295589	792630	$254,763.51

KPMG

2002	295589	792622	$91,973.19
2002	295589	792600	$72,779.27

To help you further understand the disbursements identified above, Attachment C to this letter, the Invoice/Disbursement Spreadsheet, reconciles the FRN disbursements listed above to the invoices submitted to USAC.

As stated in the attached letter from USAC, the examination relates to your compliance with FCC Rules for the S&L Program. At a minimum, it will cover:

- Record keeping
- Applications for each Funding Year listed above
- Service provider selection and contracting for the FRN(s) listed above
- Supporting documentation for the reimbursements listed above

Additional FRNs or Funding Year information may be selected during our on-site fieldwork if considered necessary by the engagement team.

The examination team will include the following KPMG management personnel:

NAME	POSITION	PHONE NUMBER	EMAIL
Andrew Gottschalk	Partner	312-665-2883	agottschalk@kpmg.com
Amanda Sterling	Manager	216-875-8250	asterling@kpmg.com

A representative of our engagement team will contact you within the next week to discuss the examination and the timing of their visit to your location. A key objective of that discussion will be to make sure that you clearly understand what you need to do to ensure that the examination goes smoothly and efficiently. Those requirements include:

1. Within fifteen (15) business days, sending us the documents requested in Attachment D
2. Completing Attachment F, Internal Control Questionnaire, and including it with the Attachment D documents
3. Gathering and organizing the documents requested in Attachment E for the examination team's on-site visit
4. Prepare the Service Provider Bill & Reimbursement Reconciliation spreadsheet (Attachment G) that is requested in item I of Attachment E for each FRN identified in the table above.

In addition to the URL link included on page two of USAC's letter, we encourage you to review the "Understanding Beneficiary Audits" page (http://www.usac.org/sl/about/audits/default.aspx) on USAC's website.

Please send the documents requested in Attachment D to the following address:

KPMG LLP
1375 East Ninth Street
Suite 2600
Cleveland, OH 44114
ATTN: Amanda Stering

If there are any immediate matters or issues that you would like to discuss please call the contacts listed above or Alpa Parekh at 703-286-8473.

Sincerely,

Terrence F. Henzey
Lead Engagement Partner

Attachments:

A. USAC letter signed by Wayne Scott, Vice President Internal Audit Division
B. FCC OIG letter signed by Kent R. Nilsson, Inspector General
C. Invoice/Disbursement Spreadsheet
D. Documentation to be Sent to KPMG within Fifteen Business Days of Examination Notification
E. Documentation to be Provided to KPMG Upon Arrival at Your Location
F. Internal Control Questionnaire
G. Service Provider Bill & Reimbursement Reconciliation (Instructions, Example and Spreadsheet to be completed for each selected FRN)
H. Example Assertions Letter

cc: USAC

USAC
Universal Service Administrative Company

Wayne M. Scott
Vice President

Internal Audit Division

November 14, 2008

RE: FCC Inspector General Universal Service Fund Audits – Round 3 (2008-2009)

Dear E-Rate Program Beneficiary:

The Universal Service Administrative Company (USAC) has engaged the services of professional public accounting firms (audit firms) to perform examinations of recipients of Universal Service Fund (USF) Schools & Libraries (S&L) funds. These Examinations are being conducted under the direction of the Federal Communications Commission (FCC) Office of Inspector General (OIG) principally to assess compliance with FCC Rules and to address requirements related to the Improper Payments Information Act (IPIA).[1] The examination of your company relates to compliance with FCC Rules and the E-rate program disbursements. The efficiency of the examination will depend on the availability of your staff and the condition of the documentation made available prior to and during the course of the examination.

Nature of the Examination

As more fully described in Governmental Auditing Standards and AICPA Standards (Section AT 601), a compliance attestation examination requires that management:

1) Perform an evaluation of its compliance with *47 C.F.R Part 54, Subparts C, D, J and K and Part 36, Subpart F Rules and applicable Orders ("Rules and Orders")*
2) Acknowledge (in the form of an assertion letter, an example assertion letter is attached for reference) responsibility for compliance with applicable requirements of the Rules and Orders; and
3) Provide a representation letter to the audit firm. The form and content of the management representation letter will be discussed with management at the inception of this examination.

Contact Information

The audit firm will provide you with contact information of audit firm personnel responsible for conducting the audit. If you have any questions or concerns that the audit firm cannot address, please contact the following USAC personnel:

[1] Public Law 107-300, Stat. 2350, November 26,2002

NAME	COMPANY	POSITION	PHONE NUMBER	EMAIL
Jeff Mitchell	USAC	Director, Outsourced Audit Services	202-776-0200	jmitchell@usac.org
Wayne M. Scott	USAC	Vice President, Internal Audit	202-776-0200	wscott@usac.org

Other Matters

Please recognize that the audit firm has the same authority as USAC's Internal Audit Division to request and view documents.

The results of the audit firm's work including your management's written response will be presented in a draft report to USAC and the FCC Office of Inspector General (FCC OIG). Upon review and approval of the report by USAC in consultation with FCC OIG, the report will be distributed to appropriate parties.

The following URL provides some additional information to assist your understanding of this examination: http://www.sl.universalservice.org/reference/bestpractices.asp .

If there are any matters or issues that you would like to make us aware of, or if you have any questions or concerns, please feel free to call Mr. Jeff Mitchell or myself.

Sincerely,

Wayne M. Scott

Wayne M. Scott
Vice President, Internal Audit Division
Universal Service Administrative Company

Attachment F

HEMET UNIFIED SCHOOL DISTRICT

Audit Number: SL-2008-192

BEN Number: 143751

KPMG LLP
303 East Wacker Drive
Chicago, IL 60601-5212

Independent Accountants' Report

Hemet Unified School District

Universal Service Administrative Company

Federal Communications Commission:

We have examined Hemet Unified School District's (Beneficiary Number 143751) compliance with the Federal Communications Commission's 47 C.F.R. Part 54 Rules and related Orders identified in the accompanying Attachment 1 relative to disbursements of $1,733,061 made from the Universal Service Fund during the fiscal year ended June 30, 2008 and relative to its Funding Year 2002, 2006 and 2007 applications for funding and service provider selections related to the Funding Request Numbers for which such disbursements were made. Management is responsible for Hemet Unified School District's compliance with those requirements. Our responsibility is to express an opinion on Hemet Unified School District's compliance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards,* issued by the Comptroller General of the United States and, accordingly, included examining, on a test basis, evidence about Hemet Unified School District's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on Hemet Unified School District's compliance with specified requirements.

Our examination disclosed material noncompliance with competitive bidding and discount rate calculation requirements applicable to Hemet Unified School District relative to disbursements made from the Universal Service Fund during the fiscal year ended June 30, 2008. Detailed information relative to the material noncompliance is described in items SL2008BE192_F01 and _F02 in Attachment 2.

In our opinion, because of the effect of the material noncompliance described in the third paragraph, Hemet Unified School District has not complied with the aforementioned requirements relative to disbursements of $1,733,061 made from the Universal Service Fund during the fiscal year ended June 30, 2008 and relative to its Funding Year 2002, 2006 and 2007 applications for funding and service provider selections related to the Funding Request Numbers for which such disbursements were made.

In accordance with *Government Auditing Standards*, we are required to report findings of significant deficiencies and material weaknesses that come to our attention during our examination. We are also required to obtain the views of management on those matters. We performed our examination to express an opinion on whether Hemet Unified School District complied with the aforementioned requirements and not for the purpose of expressing an opinion on the internal control over compliance; accordingly, we express no such opinion. Our examination disclosed certain findings, as discussed below, that are required to be reported under *Government Auditing Standards*.

A control deficiency in an entity's internal control over compliance exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect noncompliance with a type of compliance requirement of a federal program on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to comply with federal program requirements, such that there is more than a remote likelihood that noncompliance with a type of compliance requirement of a federal program that is more than inconsequential will not be prevented or detected by the entity's internal control. We consider the deficiencies in internal control over compliance described in items SL2008BE192_F01 through _F04 in Attachment 2 to be significant deficiencies.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that material noncompliance with a type of compliance requirement of a federal program will not be prevented or detected by the entity's internal control. Of the significant deficiencies in internal control over compliance described in Attachment 2, we consider items SL2008BE192_F01 through _F03 to be material weaknesses.

Hemet Unified School District's responses to the findings identified in our examination are described in Attachment 2. We did not examine Hemet Unified School District's responses, and accordingly, we express no opinion on them.

KPMG LLP

November 24, 2009

Attachment 1

Federal Communications Commission's ("FCC") 47 C.F.R. Part 54 Rules and Related Orders with which Compliance was Examined

Document Retention Matters:

Section 54.504 (c) (1) (x), which was effective as of October 13, 2004

Section 54.516 (a), which was effective from July 17, 1997 through October 12, 2004

Section 54.516 (a), which was effective from March 11, 2004 through October 12, 2004

Section 54.516 (a) (1), which was effective as of October 13, 2004

Application Matters:

Section 54.501 (b), as revised, which was originally effective as of July 17, 1997

Section 54.504 (b) (1), as revised, which was originally effective as of July 17, 1997

Section 54.504 (b) (2), as revised, which was originally effective as of July 17, 1997

Section 54.504 (b) (2) (i), as revised, which was originally effective as of February 12, 1998

Section 54.504 (b) (2) (iii), which was effective as of October 13, 2004

Section 54.504 (b) (2) (iv), which was effective as of October 13, 2004

Section 54.504 (b) (2) (v), which was effective from July 17, 1997 to October 12, 2004

Section 54.504 (b) (2) (vi), which was effective as of October 13, 2004

Section 54.504 (b) (2) (vii), which was effective from July 17, 1997 to October 12, 2004

Section 54.504 (c), which was effective as of February 12, 1998

Section 54.505 (b), which was effective as of July 17, 1997

Section 54.505 (c), as revised, which was originally effective as of July 17, 1997

Section 54.508 (a), which was effective as of October 13, 2004

Section 54.508 (c), which was effective as of October 13, 2004

Section 54.520 (c), which was effective as of April 20, 2001

Section 54.520 (c) (1) (i), which was effective as of April 20, 2001

Section 54.520 (c) (1) (ii), which was effective as of April 20, 2001

Federal Communications Commission's ("FCC") 47 C.F.R. Part 54 Rules and Related Orders with which Compliance was Examined, continued

Service Provider Selection Matters:

Section 54.504 (a), which was effective as of February 12, 1998

Section 54.504 (b) (4), which was effective as of January 1, 1999

Section 54.511 (a), as revised, which was originally effective as of July 17, 1997

FCC Order 03-313, paragraphs 39 and 56, which was issued on December 8, 2003

FCC Order 00-167, paragraph 10, which was issued on May 23, 2000

Receipt of Services and Reimbursement Matters:

Section 54.500 (b), which was effective as of July 21, 2003

Section 54.504, which was effective as of July 17, 1997

Section 54.504 (b) (2) (ii), which was effective from February 12, 1998 through October 12, 2004

Section 54.504 (b) (2) (iii), which was effective from July 17, 1997 through October 12, 2004

Section 54.504 (b) (2) (v), which was effective from July 17, 1997 through March 10, 2004

Section 54.504 (b) (2) (v), which was effective as of October 13, 2004

Section 54.504 (c) (1) (vii), which was effective as of October 13, 2004

Section 54.504 (f), which was effective as of March 11, 2004

Section 54.504 (g), which was effective as of March 11, 2004

Section 54.505 (a), which was effective as of July 17, 1997

Section 54.513 (c), which was effective as of March 11, 2004

Section 54.514 (b), as revised, which was originally effective as of July 21, 2003

Section 54.523, which was effective as of March 11, 2004

FCC Order 03-313, paragraph 60, which was issued on December 8, 2003

FCC Order 04-190, paragraph 24, which was issued on August 13, 2004

<u>**Attachment 2**</u>

Schedule of Findings
(presented in accordance with the standards applicable to attestation engagements contained in *Government Auditing Standards*)

<u>**Matters Related to Material Non-Compliance**</u>

Finding No. **SL2008BE192_F01**

Condition

The Hemet Unified School District ("Beneficiary" or "District" or "Hemet USD") did not comply with applicable state and local procurement processes when conducting competitive bidding with respect to the Funding Year ("FY") 2006 for which disbursements were made by the Universal Service Fund ("USF") during the period under examination. The Beneficiary's procurement policy indicated that any combined purchases to one vendor over the bid limit must be formally bid as stated in California Public Contract Code ("CPCC") section 20111. Specifically for the purpose of securing bids, the CPCC regulations (sections 20111 and 20112) require school districts to publish a notice calling for bids at least once a week for two weeks in some newspaper of general circulation. With respect to this requirement, the Beneficiary had not published notice relative to any of the FRNs for which disbursements had been made during the year under examination.

We noted that the Beneficiary did post the related Federal Communications Commission ("FCC") Forms 470 on the Schools and Libraries Division ("SLD") website and the related Requests for Proposals ("RFP") on its website (if applicable). As a result, the Beneficiary received 1 bid in FY 2002, 0 bids in FY 2006, and 2 bids in FY 2007 for the above-mentioned RFPs.

Criteria

FCC Rule 54.504 (a) requires that a beneficiary comply with applicable state and local procurement processes when conducting competitive bidding.

Cause

The Beneficiary's purchasing department did not follow the publication advertisement requirement noted in the California Public Contract Code and the Beneficiary's Bidding Policies and Procedures. This lack of employees with full knowledge of the FCC Rules regarding competitive bidding constitutes an internal control deficiency in the service provider selection process.

Effect

The monetary effect of this finding is that $478,566 disbursed during the fiscal year ended June 30, 2008 is subject to recovery by the Universal Service Administrative Company ("USAC"). This amount represents the full amounts disbursed under the FRNs identified in the table below, which identifies all FRNs for which disbursements were made during the fiscal year ended June 30, 2008 that had committed funding that was greater than

Schedule of Findings, continued
(presented in accordance with the standards applicable to attestation engagements contained in *Government Auditing Standards*)

the established thresholds determined by California Public Contract Code ($50,000, $65,100 and $69,000 for calendar years 2002, 2006 and 2007, respectively).

1409240	2006	Telecom	$ 325,875
1409327	2006	Telecom	$ 152,691
		Total Monetary Effect	**$ 478,566**

Recommendation The Beneficiary should ensure that its employees with responsibility for the Schools and Libraries Program are fully aware of the FCC Rules so that it complies with those FCC Rules and its own document retention, local and state procurement procedures as required by those FCC Rules.

Beneficiary Response It is opinion of Hemet Unified School District, in consultation with purchasing professionals at both the county level and at the State level, that telecommunications services, under regulation by the FCC and the California Public Utilities Commission (CPUC) are not subject to the competitive bidding requirements outlined in California Public Contract Code (CPCC). Nowhere in CPCC is the procurement of utilities or telecommunications specifically addressed. In lieu of specific guidance, the District, (1)followed FCC guidelines regarding competitive bidding, and (2)followed best practices in the procurement of these types of services by requesting proposals via the Form 470 process.

The District would like to respond to the assumption that a newspaper advertisement would result in the District receiving more proposals in response to its RFP. When it comes to the Universal Service Schools and Libraries Program, the most appropriate venue for “advertising” an RFP is via the Form 470. Telecommunications and Internet service providers that participate in the program are much more likely to visit the USAC Form 470 website to look for prospective customers than to review advertisements in local newspapers. Service providers are so attuned to the funding cycle and timeline associated with the Schools and Libraries program that it is far more worth their while to surf the USAC website for potential business than to subscribe to local newspapers all over the State, and nation, for that matter. This is especially true for FCC registered telecommunications service providers.

To this end, the California Department of Education is working in tandem with the Attorney General’s office to address the antiquated requirement regarding advertising in a newspaper. It is anticipated that there will be an

Schedule of Findings, continued
(presented in accordance with the standards applicable to attestation engagements contained in *Government Auditing Standards*)

amendment to the associated Public Contract Code to better align the requirements for advertising with the advancements in technology that have been made in the last 20 years or so.

In closing, it is important to note that Hemet USD ultimately ended up with a competitively priced, cost effective solution from the primary local exchange carrier for services that are publicly available via the California Public Utilities Commission (CPUC) tariffs. There is no evidence of waste, fraud or abuse and all payments that were made to the service provider by USAC and Hemet USD were found to be compliant and in accordance with the guidelines set forth as part of the IPIA.

Several other KPMG teams have vetted procurement of telecommunications in Riverside County and it has never been interpreted that advertising is a requirement in this regard. Following FCC Form 470 guidelines suffices for meeting the competitive bidding requirement. Additionally, as indicated during the field work and as part of the submitted management response, Hemet USD is in a territory in which there is one primary service provider during E-Rate FY2006, Verizon, California. For all of the reasons stated, it is the opinion of Hemet USD that this finding be removed in its entirety.

KPMG Comment on Beneficiary Response

Subsequent to the exit conference held February 13, 2009, we were not provided adequate documentation to support whether the Beneficiary complied with FCC Rule 54.504a. As the Beneficiary stated in his response, it is Hemet Unified School District's opinion that telecommunication services are not subject to competitive bidding requirements. Additionally, we spoke with another major service provider who indicated that they have been providing telecommunications services in that area since 2000. The facts and circumstances for Riverside County are not comparable with those noted in this finding.

Finding No. **SL2008BE192_F02**

Condition

For each of the Funding Years associated with the FRNs under examination, the Beneficiary calculated the shared discount rate by determining the percentage of its total number of students, by school, receiving free and reduced meals and choosing the discount rates for such percentages from the table included in the FCC Rules and determining the weighted average for the entire District. This is an allowable method, however, we noted that students may be counted in both categories (i.e. free and reduced), causing the shared discount rate to be inaccurate. Additionally, non-enrolled community individuals are included in the free and reduced statistics as they also receive free and reduced lunches from

Schedule of Findings, continued
(presented in accordance with the standards applicable to attestation engagements contained in *Government Auditing Standards*)

the Hemet Unified School District. The Beneficiary attributed this issue to inaccurate system reporting and was unable to provide information to eliminate the effect of double-counting students or inclusion of non-enrolled students.

The FCC Forms 471s noted the weighted average discount rates for each of the FYs as follows: FY 2002 – 90%; FY 2006 – 75%; and FY 2007 – 83%.

Criteria

FCC Rule 54.505 (b) requires a school/district to determine its level of poverty, for use in determining its available discount rate, by using the percentage of its student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism in the public school district in which they are located.

Cause

The Beneficiary's information systems and National School Lunch Program ("NSLP") data collection processes are inadequate to allow for accurate free and reduced meal reporting. The Beneficiary was unable to provide sufficient source documentation to support that its reported NSLP data only included students enrolled in its schools and did not double count students in the free and reduced categories. We noted the Beneficiary's inadequate information systems, data collection, and reporting processes as deficiencies in internal controls over compliance with FCC rules related to the application process.

Effect

We were unable to determine the monetary effect, if any, of this finding since the NSLP student count data which was available was known to be inaccurate and the necessary data was not available to recalculate the appropriate shared discount rate for the Beneficiary for comparison to that included on the FCC Forms 471.

Recommendation

The Beneficiary should review Schools and Libraries Program rules related to the discount calculation and ensure that its information systems accurately report the district's free and reduced NSLP data prior to filing Form 471. To mitigate the risk of inaccurate reporting, we recommend the Beneficiary implement one or both of the following controls:

- Identify the root cause of the system issue and implement a corrective action plan to remediate the issue.
- Develop and implement procedures to validate the accuracy of the NSLP data used to calculate the discount percentage.

Beneficiary Response

Due to influx of students on a daily basis, the data for free and reduced lunch count is constantly changing. Our Nutrition Department feeds regular students as well as students in county programs. [California] State

Schedule of Findings, continued
(presented in accordance with the standards applicable to attestation engagements contained in *Government Auditing Standards*)

Law allows parents' applications to carry over from the last year to allow the parents ample time to submit a new application for the current year. In addition, the Nutrition Department has a separate system that is not directly linked to the current student information system. As a way to synchronize the data better, we are looking to incorporate the Nutrition data in our new student information system.

Other Matters Related to Non-Compliance

Finding No. **SL2008BE192_F03**

Condition The Beneficiary's inventory records for internal connections were not sufficient to demonstrate compliance with the requirements included in the FCC Rules as follows:

- The Beneficiary's fixed asset inventory records do not provide the level of detail (i.e. serial numbers) nor accurate location codes to identify, and as a result, locate specific Schools and Libraries Program funded equipment.

- The Beneficiary does not record all inventory purchases related to the Schools and Libraries Program, as the cost of some items purchased under the Schools and Libraries Program was below $500, which was below the minimum amount per the Beneficiary's capitalization policy.

As a result, alternative testing procedures were performed to verify the appropriateness of the internal connections purchased as part of the FRNs under examination. These procedures included comparing the asset information from the physical inventory test counts to the asset information contained in the service provider sales orders/invoices which were reconciled to Form 471, however, the service provider sales orders did not include serial numbers for equipment purchased. Therefore, it was difficult to determine whether the equipment observed was the specific equipment purchased by the Beneficiary under the selected FRNs.

Model number, asset description and quantity were used to compare the physical inventory test counts to the service provider sales orders/invoices. Of the 357 pieces of equipment which were purchased using the FRNs for which internal connections services disbursements were made during the period under examination, there was one item for which we had no evidence of its location.

Criteria Per FCC Rule 54.516 (a) (1), a Beneficiary must maintain, for a period of five years after purchase, asset and inventory records of equipment

Schedule of Findings, continued
(presented in accordance with the standards applicable to attestation engagements contained in *Government Auditing Standards*)

purchased as components of supported internal connections services sufficient to verify the actual location of such equipment.

Per FCC Rules 54.504 (b) (2) (v), 54.504 (b) (2) (ii) and 54.504 (c) (1) (vii), services acquired using Schools and Libraries Program funds must be used solely for educational purposes.

Cause The Beneficiary received invoices from the vendor with insufficient details to determine what products were received. Asset listings are not detailed and did not provide information on the location of the equipment purchased as part of the FRNs under examination. The lack of review of invoices to identify any variances of items received and failure to maintain adequate asset tracking records are considered deficiencies in internal controls over compliance with FCC Rules within the Beneficiary's receipt of services and reimbursement and document retention processes.

Effect We were unable to determine the monetary effect as a result of this finding, if any, because our alternative procedures did not provide sufficient reasonable assurance to verify that the specific items of internal connections equipment purchased as part of the FRNs under examination were being used solely for educational purposes. With respect to the one item for which we had no evidence of it s location, we could not determine the amount disbursed because the service provider bill did not provide itemized cost information.

Recommendation The Beneficiary should:

- Maintain adequate inventory records sufficient to verify the actual location of equipment and include (at a minimum) the FRN, funding year, serial number, and model number/description for each item.
- Request the service provider to include asset serial numbers and what items were installed at the schools
- Verify the receipt of items, add the items to the inventory records and reconcile invoices to the quarterly disbursement report provided by USAC.

Beneficiary Response Hemet USD is currently working to automate our internal inventory process, going from manual entry to an electronic capability, which will reduce the number of manual input from the warehouse to the purchasing department.

Hemet USD does and will continue to work closely with all service providers to provide accurate asset inventory that will show make, model, serial number, cost, date of installation, and which site the items was installed.

Schedule of Findings, continued
(presented in accordance with the standards applicable to attestation engagements contained in *Government Auditing Standards*)

We will continue to verify and reconcile to the best of our ability against the quarterly disbursement report.

As you can see on this finding only one item out of 357 items was not accounted for. This one item in question can be accounted for from our perspective as it was part of a package that contained several model numbers.

Finding No. **SL2008BE192_F04**

Condition

For two of the eleven FRNs selected for detailed testing during our examination, we identified costs submitted to USAC for reimbursement which were not eligible as follows:

- The FCC Form 474 filed by the service provider for FRN 792640 included costs for ineligible services. The ineligible services were for initial planning as part of the internal connection services requested.
- The FCC Form 474 filed by the service provider for FRN 1588367 included costs for equipment and services which were not received.

Criteria

Per FCC Rules 54.504 (b) (1) and (c), a school/district may request only eligible goods and services.

Per FCC Rule 54.505 (a), a school/district must apply its discount percentage to the appropriate pre-discount price.

Cause

The Beneficiary, when invoiced by the service provider for charges, did not review the components on the invoices for eligibility nor did they verify receipt of goods or services. This lack of review is considered a deficiency in internal controls over compliance with FCC Rules within the Beneficiary's receipt of services and reimbursement process.

Effect

The monetary effect of this finding is that the $63,597 disbursed during the fiscal year ended June 30, 2008 is subject to recovery by USAC. This amount represents the undiscounted cost of equipment not received or fully supported of $35,754 in FY 2007, and the undiscounted cost for ineligible services of $37,690 in FY 2002, multiplied by the Beneficiary's discount rates of 83% and 90%, respectively. The following table presents the monetary effect by FRN:

Schedule of Findings, continued
(presented in accordance with the standards applicable to attestation engagements contained in *Government Auditing Standards*)

FRN	FY	Service Type	Monetary Effect
1588367	2007	Internal Connections	$ 29,676
792640	2002	Internal Connections	$ 33,921
		Total Monetary Effect	**$ 63,597**

Recommendation

We recommend the Beneficiary:
- Consult the Eligible Service List prior to requesting future goods and services to ensure their eligibility for Schools and Libraries Program reimbursement
- Verify that the invoice includes goods and services that have been received prior to processing invoice

Beneficiary Response

FRN 1588367 has already been corrected. The Service Provider accidentally billed using original quotes which were later modified after further site walk. The Service Provider has corrected the error and submitted credit memos to SLD and Hemet USD. Copies of the credit memos were provided to KPMG. Based on the actions taken to corrent the mistake and due to USAC being aware with the credit memos, this finding should be removed in it's entirety.

FRN 792640 was under an FCC appeal during the audit. USAC has recently approved FRN 792640, which we plan to complete. The "initial planning" in question had no cellular related to it per KPMG condition mentioned above. Part of the issue with this finding is semantics. KPMG initial planning is the same as mobilization, which created a progress bill. Mobilization according to CPCC Section 10104 **"As used in this part, "mobilization" includes preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies and incidentals to the project site, for the establishment of all offices, buildings and other facilities necessary for work on the project, and for all other work and operations which must be performed or costs incurred prior to beginning work on the various items on the project site"** The mobilization phase of the project created a "progress billing", which is actually the amount being questioned. Mobilization is common practice per CPCC, is an eligible service and is a part of the whole project which Hemet USD plan to complete before 9/30/2010. As I mentioned above, FRN 792640 has been approved by USAC

Schedule of Findings, continued
(presented in accordance with the standards applicable to attestation engagements contained in *Government Auditing Standards*)

and we will continue to complete the project, so this finding should be removed in it's entirety.

KPMG Comment on Beneficiary Response

With respect to FRN 1588367, the correction referred to in the Beneficiary's response was made in February 2009, which was subsequent to the period under examination.

With respect to FRN 792640, the service provider stated initial planning includes designing, surveying and assessment services prior to installation. Costs associated with initial planning are ineligible.